

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 13418 of 2004

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Between:

Dodda Srinivasa Rao S/o Subba Rao
Chandrapadu Village, Cheemakurti Mandal, Prakasam District

..... PETITIONER

AND

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- 1 District Panchayat Officer, Prakasam District, Ongole
- 2 Revenue Divisional Officer, Prakasam District, Ongole
- 3 Election Officer, Chandrapadu Gram Panchayat, Cheemakurti Mandal
Prakasam District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ order or direction declaring the notification issued by the 3rd Respondent viz. Election Officer dt 22/7/2004 for election of Member of 8th Ward, Chandrapadu Gram Panchayat, Cheemakurti Mandal, Prakasam District by reserving the seat in the category of SC as illegal, injustice and contrary to the earlier Notification.

Counsel for the Petitioner:MR.M.S.N.PRASAD

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following :

ORDER:

A member of 8th Ward of Chandrapadu Gram Panchayat expired necessitating to hold a fresh election for the said casual vacancy. When the elections were held in August 2001, the 8th Ward of Chandrapadu Gram Panchayat was unreserved and meant for O.C. group. It is the case of the petitioner that the third respondent issued election notice in Form No.1 on 22.7.2004. In the said notification it was mentioned that 8th Ward is reserved for Scheduled Castes. The petitioner alleges that he belongs to O.C. category and if the election is allowed to go on, he would stand to lose valuable right to contest for the office of ward member. The petitioner has also produced the original of election notice in Form No.1 issued under Rule 4(4) of A.P. Panchayat Raj (Conduct of Elections) Rules, 1994.

When the matter was listed, the learned Government Pleader for Panchayat Raj was directed to produce the file and also notification. On 4.8.2004 it was brought to the notice of this Court that the election notice in Form No.1 was issued on 23.7.2003 keeping the vacancy unreserved (for O.C.) and therefore, the petitioner has not produced the correct election notice. To enable the petitioner to meet the case, and also to enable the respondents to file the counter affidavit, at the request of the learned Government Pleader, the matter was adjourned. Such counter affidavit is filed on 06.08.2004 by the third respondent herein.

In the counter affidavit it is stated that the election notice for the office of ward member (8th Ward) was issued on 23.7.2004 and not on 22.7.2004 notifying the vacancy for O.C. as was done in the year 2001. It is further stated that six candidates filed nominations by depositing Rs.200/- each as deposit amount, that four candidates withdrew the nominations and two candidates are contesting election for whom symbols were duly allotted. It is contended that if the vacancy is reserved for Scheduled Castes, those who filed nominations could not have deposited Rs.200/- for each when the deposit money required for S.C. candidate is only Rs.60/-. Along with the counter affidavit the original notification issued by the third respondent is also placed before this Court.

The learned counsel for the petitioner strenuously contended that the notification produced by the Government Pleader in Form No.1 is not the correct notification. He points out that when all the columns in the election notice are typed, the word "for others" was written with handwriting, which would throw doubt on the Form No.1. According to the learned counsel for the petitioner, the notice produced before this Court was brought into existence after filing of the writ petition antedating the same.

This submission is refuted by the learned Government Pleader, who submits that in all the village panchayats where elections are held for casual vacancies, the election schedule prescribed by the State Election Commission in the notification issued under Article 243K was scrupulously followed and therefore, the election notification allegedly issued on 22.7.2004 by third respondent, which is produced before this Court is not correct.

This Court has perused Form No.1 election notice produced by the petitioner as well as similar form produced by the learned Government Pleader. It is not denied before me that the State Election Commission while issuing notification under Article 243K included election programme in annexure-II to the notification, which is to the following effect:

ANNEXURE-II

ELECTION PROGRAMME

1. Date of issue of election notice by the Election

Officer under Rule 4(4) of Andhra Pradesh : 23.7.2004

Panchayat Raj (Conduct of Elections) Rules 1994 (from this date nomination can be in Form-1. filed between 10.30 AM to 5.00 PM)

2. Last date of filing of nominations : 27.07.2004

3. Scrutiny of Nominations : 28.07.2004

(11.00 AM onwards)

4. Appeal before Revenue Divisional Officer against : 29.07.2004

the rejection of nominations (upto 5.00 P.M.)

5. Disposal of Appeals by Revenue Divisional Officer : 30.07.2004

6. Last date of withdrawal of candidature : 31.7.2004

7. Publication of list of contesting candidates : 31.7.2004

(After 3.00 PM)

8. Date of poll : 7.8.2004

(From 7.00 AM to 1.00 PM)

9. Date of counting of votes : 7.8.2004

(from 2.00 P.M. onwards)

10. Declaration of results : Soon after the completion of
counting of votes

Sd/- Debabrata Kantha,

Secretary.

Note:1.Collectors and District Election Authorities shall not notify elections to any office in Gram Panchayats wherever a Court of Law issued orders restraining Election Authorities from holding elections.”

The election notice allegedly issued by the third respondent in Form No.1 produced by the petitioner bears the signature, dated 22.7.2004, whereas Form No.1 notice produced by the learned Government Pleader contains the signature of the third respondent dated 23.7.2004. When the Election Commission directed all the Election Officers to issue election notice under Rule 4(4) on 23.7.2004, the third respondent could not have issued the election notice on 22.7.2004 itself. This factum belies the contention of the petitioner that the election notice in Form No.1 issued on 22.7.2004 reserving the vacancy for S.C. is correct one. In any view of the matter, the counter averment that all the six candidates filed nominations paying a deposit of Rs.200/- supports the view that Form No.1 notice was issued keeping the vacancy unreserved.

Article 243-O of the Constitution of India bars the exercise of jurisdiction and no election to any Panchayat shall be called in question except by an election petition before duly constituted Tribunal. Section 233 of the A.P. Panchayat Raj Act is also to the same effect. The law is well settled that ordinarily the Court in exercise of power of judicial review cannot interfere in election matters. A reference may be made to a judgment of Supreme Court in **ELECTION COMMISSION OF INDIA V. ASHOK KUMAR** wherein the following principles are laid down:

For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

1. If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.
2. Any decision sought and rendered will not amount to “calling in question an election” if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3. Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.
4. Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.
5. The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.

Therefore, till the elections are completed, the invoking of power of judicial review has to be postponed. If the petitioner is so advised, he may challenge the election to the office of the 8th Ward of Chandrapadu Gram Panchayat by way of election petition. As and when such election petition is filed, the learned Election Tribunal shall dispose of the matter without influenced by any of the observations made hereinabove.

The writ petition, with the above observations, is dismissed.

V.V.S. RAO. J

Date: 06th August, 2004.

Tsr.

To

- 1 District Panchayat Officer, Prakasam District, Ongole
- 2 Revenue Divisional Officer, Prakasam District, Ongole
- 3 Election Officer, Chandrapadu Gram Panchayat, Cheemakurti Mandal
Prakasam District
- 4 Two CCs to Government Pleader for Panchayat Raj & Rural Development, High
Court Buildings, Hyderabad. (OUT).
- 4 Two CD copies.